

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3259/P1dn
EHS:kjf:rs

December 6, 2013

Matt:

This draft incorporates the changes proposed in the drafting request related to raffles as well as the raffle rules under ch. Game 44, Wis. Adm. Code. Please carefully review the draft to ensure it is consistent with your intent. Please also review the issues raised in the four-star notes (****NOTE:) included in the draft. Note that some of the proposed language from your request has been reworded for simplicity or clarity or to conform it to our drafting conventions, and some proposed changes have been moved to more appropriate places in the statutes. Please also note the following:

1. The following language from article IV, section 24 (4), of the Wisconsin Constitution governs raffles:

“The legislature may authorize the following raffle games licensed by the state, but all profits shall accrue to the licensed local organization and no salaries, fees or profits may be paid to any other organization or person: raffle games operated by local religious, charitable, service, fraternal or veterans’ organizations or those to which contributions are deductible for federal or state income tax purposes. The legislature shall limit the number of raffles conducted by any such organization.”

This presents two problems with respect to some of the proposed language in the drafting request. First of all, in s. 563.94, stats., you proposed adding “for profit” to describe the types of organizations to which a licensed organization cannot pay salaries, fees, or profit in connection with the operation of a raffle. You also proposed to add language that specifically authorizes a licensed organization to share the proceeds of a raffle with a national affiliate of the organization. However, based on this section of the Wisconsin Constitution, these changes are highly likely to be found unconstitutional if challenged.

Secondly, in s. 563.90, stats., you proposed adding “nonprofit” to describe the types of organizations that are qualified to conduct a raffle upon receiving a raffle license. However, because the organizations that may be authorized to conduct raffles are specifically listed in the constitution, adding a different type of organization is likely to be found unconstitutional. Please note, however, that the term “nonprofit” is often intended to mean an organization “to which contributions are deductible for federal income tax purposes or state income or franchise tax purposes,” which is already

included in this provision. Therefore, the proposed change may not be necessary to satisfy your intent. (I did not include any of these proposed changes in the draft.)

2. The rules include definitions for a “Class A raffle ticket” and a “raffle ticket.” (ss. Game 44.02 (4) and (7), Wis. Adm. Code.) Both definitions state that a ticket is used or sold “for the purpose of an individual desiring to enter” a raffle. This phrasing is vague and confusing. The draft instead states that a ticket “entitles the purchaser to one entry” in a raffle (see proposed s. 563.03 (12r)).

I also added a clarification that raffle tickets entitle the purchaser to enter a single-event raffle, as opposed to a calendar raffle, for which the instrument of entry is a calendar. Let me know if this is not consistent with your intent.

Furthermore, the definition of “raffle ticket” in the rules includes the restriction that raffle tickets must meet the requirements of ss. 563.93 and 563.935, stats. However, it is confusing to include this requirement in the definition of “raffle ticket,” because raffle tickets, however defined, must meet the requirements in ss. 563.93 and 563.935, stats. Therefore, this part of the definition is omitted in the draft.

Finally, it is not necessary to define “Class A raffle ticket” if “raffle ticket” is already defined. The terms have the same definition, except that one applies specifically to Class A raffles. For this reason, the draft does not include a definition for “Class A raffle ticket.”

3. Section Game 44.02 (5), Wis. Adm. Code, gives a definition for “drawing” that includes substantive restrictions regarding how a drawing must be conducted. It is preferable to avoid placing nondefinitional material in a definition, so I moved these restrictions to proposed s. 563.93 (2g) (g). Without the substantive material, what remains in the definition is the commonly recognized meaning of “drawing.” It is not necessary to define a term in the statutes unless the definition is not apparent from the context or is more specific than the generally recognized meaning. Therefore, this draft does not define “drawing.”

4. In s. 563.92 (2), stats., the effect of deleting “and has not exceeded the limits of s. 563.91” is to require the department to issue a license to an applicant who is qualified under s. 563.90, stats., even if the applicant, under a previous license, exceeded the limit on the number of raffles that can be conducted in one calendar year. Is this the intent? (I have not included this change in the draft.)

5. The request proposed certain requirements regarding placement and maintenance of raffle tickets in Class A raffles. (See proposed s. 593.93 (2g) (g) and (h)) Should these requirements also apply to Class B raffles?

6. The request proposed requiring that an electronic or paper copy of a license be available for inspection by any person upon request at the event or time of the drawing. This is different from s. Game 44.08, Wis. Adm. Code, which requires an original license or copy to be displayed at the drawing “so as to be easily readable by any person,” instead of available for inspection upon request. This draft incorporates the request instead of the rule (see proposed s. 563.97 (2)).

7. The request proposed a requirement to prominently display at the point of purchase any legal restrictions, age or otherwise, on the possession or ownership of a raffle prize. This is different from s. Game 44.09 (1), Wis. Adm. Code, which requires a minimum age for purchasing a ticket if there is an age restriction on any prize in a raffle, and requires the minimum age to be printed on the ticket. This draft incorporates the request instead of the rule (see proposed ss. 563.93 (2g) (a) and 563.935 (1m)).

8. In proposed s. 563.93 (1) (f), at your request the term “retail value” is changed to “fair market value.” Note that I made this change and used the term “fair market value” in proposed s. 563.97 (1) as well.

9. The request proposed to require an organization conducting a Class A raffle to make a “reasonable and good faith effort” to award all prizes, instead of requiring it to award all prizes. The term “good faith” includes the concept of reasonableness, so the draft uses just the term “good faith effort.” (See proposed s. 563.93 (2g) (b).)

10. In proposed s. 563.95, at your request the draft deletes language that placed the burden of proof on the applicant at a hearing on a license denial. If your intent is that the department have the burden of proof at this hearing, additional drafting will be required.

11. The request proposed adding language to s. 563.98, stats., about providing a copy of the report “upon the filing of a bona fide complaint.” What is meant by a “bona fide” complaint? (I have not added this language to the draft.)

12. Section 563.98 (2), stats., allows the department to suspend or refuse to renew a license if the report under s. 563.98 (1), stats., has not been filed or if the fee specified in s. 563.98 (1g), stats., has not been paid. Repealing s. 563.98 (2), stats., means the department may not suspend or refuse to renew a license even if the renewal fee has not been paid. Is this your intent? Or is it only to remove the reporting requirement for renewal?

13. Section Game 44.03 (3) (a) to (d), (e) 2. and 3., and (f) to (h), Wis. Adm. Code, all relate to the sale of equal shares of a Class A raffle ticket. However, proposed s. 563.92 (1m) deletes language allowing the department to issue a Class A license for a raffle in which equal shares of a single ticket may be sold. Because ticket shares would no longer be an option, the draft does not incorporate the rules relating to ticket shares.

14. Section Game 44.05 (5), Wis. Adm. Code, requires an organization that has “commenced a calendar raffle” to conduct all drawings and award all prizes designated in the calendar unless the entire calendar raffle is canceled. It is unclear if a calendar raffle is “commenced” when the first calendar has been sold or when a drawing has been held. For this draft I have assumed that a calendar raffle commences when a calendar has been sold. (See proposed s. 563.93 (3m) (b).)

15. Section Game 44.06, Wis. Adm. Code, requires tickets already drawn on a specific date to be placed back into the container for future drawings. Although the provision is silent, this appears to apply only to calendar raffles, in which there are

multiple drawings on different days, as opposed to single-event raffles. This draft specifies that the provision applies to calendar raffles. (See proposed s. 563.93 (2r) (b).)

16. Section Game 44.09 (2), Wis. Adm. Code, prohibits an organization from permitting the resale of raffle tickets. I assume this means that the organization may not resell tickets. (See proposed s. 563.93 (3e) (b).) Let me know if you want any changes to this.

17. Section Game 44.09 (4), Wis. Adm. Code, prohibits an organization from permitting a raffle ticket to be used for any purpose other than as a gaming instrument. I do not understand what this is intended to accomplish, so I did not include it in the draft.

18. The draft includes a delayed effective date of three months after publication. Let me know if you would like to change this.

Please let me know if you have questions or if you would like any changes. Once the issues raised above and in the four-star notes in the draft have been resolved, I will make the appropriate changes.

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